IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 464 OF 2004
IN
COMPANY PETITION NO.336 OF 2002

SBI Capital Markets Ltd. .. Appellant

v/s.

S.Kumar Nationwide Ltd. .. Respondent

Mr. D.D.Madon i/by M/s. Kanga & Co. for appellant.

Mr. Janak Dwarkadas, senior counsel i/by M/s. Dhebar & Shah for respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 5th August, 2004

P.C.

Heard Mr. D.D.Madon, the learned counsel for the appellant and Mr. Janak Dwarkadas, the learned senior counsel for the respondent-company.

2. The winding up petition filed by the appellant came to be dismissed as not maintainable vide order dated January 9, 2004 because the appellant being holder of redeemable preference shares could not, in the opinion of learned Company Judge, be treated as creditor.

3. The legal position seems to be fairly settled that the preference share holder is the shareholder only and is not and cannot be said to be holding the position of the creditor. The Andhra Pradesh

High Court speaking through B.P.Jeevan Reddy, J. (as His Lordship then was) in Lalchand Surana and ors. v. Hyderabad Vanaspathy Ltd., held that the holder of redeemable preference shares does not become creditor and the petition for winding up by the holder of redeemable preference share is not maintainable.

4. In State Bank of India & anr. v. Alstom Power Boilders Ltd. & ors., the Division Bench of this court was concerned with the scheme of arrangement-compromise under sections 391 and 394 of the Companies Act. Interalia, the question before the Division Bench was whether the dividend in respect of the cumulative preference shares having not been paid for more than two years, the holder of the cumulative preference shares was entitled to vote in the meeting of the equitable shareholders as well as the meeting of the creditors. The Division Bench while considering this aspect held that the holder of cumulative preference shares if dividend remained unpaid for more than two years had no right to attend and vote the meeting of the creditors. In other words such shareholder was not held to be creditor.

5. The fact that the respondent-company in the scheme under section 391 showed the redeemable preference shareholders under the head Class-D creditors would not make any difference in law in

so far as the status of the appellant as holder of redeemable preference shares is concerned. The appellant cannot be held to be creditor.

6. The learned Single Judge, therefore, cannot be said to have erred in holding that winding up petition at the instance of the appellant as holder of redeemable preference shares is not maintainable.

7. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)